

No. 15981 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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WALTER F. FREEMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California  
Southern Division.

FILED

JUN 29 1958

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

PHILIP CRITTENDEN,  
602 Scripps Building,  
San Diego 1, California.

For Appellee:

LAUGHLIN E. WATERS,  
United States Attorney;

EDWARD R. McHALE,  
Assistant U. S. Attorney,  
808 Federal Building,  
Los Angeles 12, California.





United States District Court, Southern District of  
California, Southern Division

No. 1661-Civ. SD

WATER F. FREEMAN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT TO RECOVER INCOME TAXES  
PAID AND FOR INCOME TAX EXEMP-  
TION ON UNITED STATES NAVY RE-  
TIRED PAY

The above-named plaintiff, in propria persona,  
complains of the defendant and alleges:

I.

The Income Tax Return for the period here in-  
volved was filed with the Director of Internal  
Revenue for the District of Los Angeles, Califor-  
nia.

II.

Plaintiff is a citizen of the United States and  
resides in the City of San Diego, County of San  
Diego, State of California.

III.

On or about March 15, 1953, plaintiff duly and  
regularly filed his income tax return for the year

1952, in which he reported that \$22.10 for the month of January, 1952, had been withheld from U. S. Navy retired pay and enclosed a voucher showing that deductions for the balance of the year had been discontinued by the Chief of the Bureau of Supplies and Accounts, Field Branch, Navy Department, [2\*] Cleveland, Ohio, in the belief that plaintiff was entitled to income tax exemption on his retired pay.

#### IV.

Plaintiff duly and regularly filed with defendant on Form 843 a claim for refund of the sum of \$22.10 withheld from his retired pay as aforesaid on the following grounds:

#### V.

That he was transferred to the Fleet Naval Reserve on June 25, 1939, for reasons other than physical disability; recalled to active duty on September 11, 1939; and retired for physical disability on February 18, 1943 (in time of war).

#### VI.

That Section 402(a) of the Career Compensation Act (63 Stat. 802, 817, lines 9-12) states:

“That any disability shown to have been incurred in line of duty during a period of active service in time of war or national emergency shall be considered to be the proximate result of the performance of active duty.”

\*Page numbering appearing at foot of page of original Certified Transcript of Record.

## VII.

That the Bureau of Medicine & Surgery, Navy Department, Washington, D. C., stated in its letter to plaintiff of July 15, 1947:

“Your medical record on file in the Bureau of Medicine & Surgery shows that you were placed on the retired list on March 1, 1943, by reason of physical disability incurred in line of duty.”

## VIII.

That prior to the enactment of the Career Compensation Act of October 12, 1949 (63 Stat. 802), plaintiff's retired pay was exempt from taxation and his income tax returns were audited and approved by the Director of Internal Revenue, Los Angeles, California.

## IX.

That upon the enactment of the Career Compensation Act, plaintiff received from Chief of Field Branch, Bureau of Supplies [3] & Accounts, Navy Department, Cleveland, Ohio, an Income Tax Information Bulletin and selection blanks.

## X.

That on February 23, 1951, plaintiff filled out section blanks and elected to have his retired pay computed in accordance with Method B (based on the provisions of the Career Compensation Act).

## XI.

That on June 19, 1951, plaintiff filled out superseding selection blanks and elected to have his re-

tired pay computed in accordance with Method C (based on laws in effect prior to the enactment of the Career Compensation Act, and restoring him to his former status).

## XII.

That the Chief of Field Branch, Bureau of Supplies & Accounts, Navy Department, Cleveland, Ohio, thereupon issued plaintiff a copy of his letter dated January 18, 1952, addressed to the Commissioner of Internal Revenue, Washington, D. C., which read in part as follows:

“Under the authority of the Commissioner of Internal Revenue’s letter of August 20, 1943, addressed to the Paymaster General of the Navy, IT:P:T-2:AOM-2, withholding in this case has been suspended and this suspension will continue until a specific ruling from the Revenue authorities advising otherwise is received.”

## XIII.

That a copy of this letter accompanied plaintiff’s income tax returns for the year, 1952, as a voucher for exemption.

## XIV.

That the Director of Internal Revenue, Los Angeles, California, stated in his letter to plaintiff of September 11, 1953:

“If you wish that further consideration be given your case, please forward the following information:

“Copies of official notifications as to percentage of [4] disability and election available to you under the Career Compensation Act of 1949, and copies of the election (or elections) made.”

XV.

That the Director of Internal Revenue, Los Angeles, California, stated in his letter to plaintiff of September 21, 1953:

“Under the above circumstances, the retirement pay would not qualify for exemption under the laws in effect either prior to or subsequent to the enactment of the Career Compensation Act, regardless of the election which was made at that time.”

XVI.

That the Chief of Field Branch, Bureau of Supplies & Accounts, Navy Department, Cleveland, Ohio, stated in its Income Tax Information Bulletin:

“Certain items of income are specifically excluded from gross income and are not, therefore, to be shown on the return. The following items fall into this category:

“a. Retired pay of persons retired from the naval service prior to 1 October, 1949, for physical disability resulting from active service. This includes the retired pay of persons recalled to active duty subsequent to retirement for other than physical disability and returned to inactive duty prior to 1 October, 1949, under Section 8(b) or (d)

of the Temporary Promotion Law of July 24, 1941 (Public Law 188, 77th Congress) after incurring physical disability while on such active duty.”

#### XVII.

That Section 8(b) of said Temporary Promotion Law (55 Stat. 603, 604, lines 36-42) states:

“An officer or enlisted man of the retired list of the regular Navy or Marine Corps who was placed thereon for reasons other than physical disability shall, if he incurs physical disability while serving under a temporary appointment in higher rank, be advanced on the retired list to such higher rank with retired pay at the rate [5] of 75 per centum of the active duty pay to which he was entitled while serving in that rank.”

#### XVIII.

That the legislators were fully aware that the personnel who had been retired were retired for length of service by the incorporation of the phrase in the legislation, “who were placed thereon for reasons other than physical disability.”

#### XIX.

That the intent of the legislation appears to be to provide a convenient means of redeeming compensation for those who were physically disabled under the stress of war duty, as Section 8(e) of said Temporary Promotion Law (55 Stat. 603, 604, lines 56-58) states:

“The benefits of this section shall apply only to an individual who incurs physical disability in line of duty in time of war or national emergency.”

## XX.

That plaintiff was legally entitled to change his selection from Method B to Method C, as Section 511 of the Career Compensation Act (63 Stat. 802, 829, lines 1-12) states:

“On and after the effective date of this Section (1) members of the uniformed services heretofore retired for reasons other than for physical disability \* \* \* shall be entitled to receive retired pay, retirement pay, retainer pay, or equivalent pay, in the amount whichever is greater, computed by one of the following methods: (a) The monthly retired pay, retainer pay, or equivalent pay in the amount authorized for such members and former members by provisions of law in effect on the day immediately preceding the date of the enactment of this act \* \* \*”

## XXI.

That Section 402(h) of the Career Compensation Act (63 Stat. 802, 820, lines 29-36) states:

“That part of the disability retirement pay computed on the basis of years of active service which is in excess of the [6] disability retirement pay that a member would receive if such disability pay were computed on the basis of percentage of disability shall not be deemed to be a pension, annuity, or similar allowance for personal injuries or sick-

ness resulting from active service in the armed forces of any country within the meaning of Section 22(b)(5) of the Internal Revenue Code as amended.”

### XXII.

That this section would apply if retired pay were computed under the provisions of the Career Compensation Act, but not if computed under laws in effect prior to the enactment of this act.

### XXIII.

That the decision of the Director of Internal Revenue, Los Angeles, California, is based on misinterpretations of the law in the following particulars:

That the Internal Revenue Agent at San Diego (Mr. Poole, initials unknown) stated that plaintiff signed Selection B, electing to have his retired pay computed under the provisions of the Career Compensation Act and that was final and conclusive and he did not have a leg to stand on.

That the Director of Internal Revenue, Los Angeles, California, in his letter to plaintiff of September 21, 1953, stated:

“On June 26, 1939, you were transferred to the Fleet Reserve by reason of length of service. No mention was made in the Orders of any physical disability.

“It appears that upon your release from active duty, you merely resumed the retired status that



you held prior to being recalled to active duty, which was based on years of service. There is no evidence that your retired status had been changed or that there was any change in the purpose for which the Navy Department paid the retirement benefits.

“The correspondence indicates that the Evaluation Board determined that the percentage of your disability was ‘zero’ at the time of your retirement. This appears to mean that the nature of [7] the disability was of the nonratable type, not having been due to any injury or sickness resulting from active service.”

#### XXIV.

That the Director of Internal Revenue, Los Angeles, California, advised plaintiff that his claim for refund had been disallowed, in his letter of April 12, 1954, in which was enclosed a copy of Form 885-D titled “No Change Report of Income Tax Audit for the year ended December 31, 1952.”

#### XXV.

That plaintiff received by registered mail from the Director of Internal Revenue, Los Angeles, California, notice of disallowance in full of his claim, in accordance with section 3772(a)(2) of the Internal Revenue Code.

#### XXVI.

Wherefore, plaintiff prays for a judgment against the defendant upon the facts and law for

the principal sum of \$22.10 and for income tax exemption on his U. S. Navy retired pay.

/s/ WALTER F. FREEMAN.

Duly verified.

[Endorsed]: Filed October 11, 1954.

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[Title of District Court and Cause.]

### ANSWER AND COUNTERCLAIM

The defendant, by its attorney, Laughlin E. Waters, United States Attorney for the Southern District of California, answers the allegations in plaintiff's complaint and counterclaims against the plaintiff as follows:

#### First

Denies the allegations of such complaint not admitted, qualified or otherwise specifically referred to below;

#### Second

1. Admits the allegations in paragraph I.
2. Admits the allegations in paragraph II.
3. Denies the allegations in paragraph III, except that it is admitted that on or about March 15, 1953, plaintiff filed his income tax return for 1952 in which he reported income of \$2,064.56 and tax withheld of \$22.10.
4. Denies the allegations in paragraph IV, except that it is admitted that plaintiff filed a claim

for refund on Form 843 in the amount of [10] \$22.10.

5. Denies the allegations in paragraph V for lack of knowledge or information sufficient to form a belief.

6. States that no responsive pleading is required to paragraph VI and the citation of law therein.

7. Denies the allegations in paragraph VII.

8. Denies the allegations in paragraph VIII.

9. Denies the allegations in paragraph IX for lack of knowledge or information sufficient to form a belief.

10. Denies the allegations in paragraph X for lack of knowledge or information sufficient to form a belief.

11. Denies the allegations in paragraph XI.

12. Denies the allegations in paragraph XII.

13. Denies the allegations in paragraph XIII.

14. Admits that the quoted matter in paragraph XIV is a portion of but not the entire statement of the Director in said letter.

15. Denies the allegations in paragraph XV, except that Exhibit A attached hereto is a true copy of the letter dated September 21, 1953, from the District Director of Internal Revenue to plaintiff.

16. Denies the allegations in paragraph XVI for lack of knowledge or information sufficient to form a belief.

17. States that no responsive pleading is required to paragraph XVII and the citation of law therein.

18. Denies the allegations in paragraph XVIII.

19. Denies the allegations in paragraph XIX.

20. States that paragraph XX does not contain allegations of fact to which a response can be made, but that if a response thereto is required, the allegations of such paragraph are denied.

21. States that no responsive pleading is required to paragraph XXI and the citation of law therein.

22. States that paragraph XXII does not contain allegations of fact [11] to which a response can be made, but that if a response thereto is required, the allegations of such paragraph are denied.

23. Denies the allegations in paragraph XXIII, except that Exhibit A attached hereto is a true copy of the letter dated September 21, 1953, from the District Director of Internal Revenue to plaintiff.

24. Admits the allegations in paragraph XXIV except that it is denied that the Director advised plaintiff in his letter of April 12, 1954, that his refund claim had been disallowed.

25. Denies the allegations in paragraph XXV.

26. Denies the allegations in paragraph XXVI.

Wherefore, the United States, having fully answered plaintiff's complaint, prays that plaintiff take nothing in this action, that his complaint be dismissed and that the United States be allowed its costs.

### Third

For counterclaim against the plaintiff the United States alleges as follows:

1. Defendant, United States of America, files this counterclaim under the direction of the Attorney General of the United States and with the authorization of the Commissioner of Internal Revenue of the United States Treasury Department.

2. On or about March 22, 1953, the Commissioner of Internal Revenue duly assessed against plaintiff income tax for the year 1952 in the amount of \$279.

3. Notice was duly given and demand was duly made for payment of said assessment. Said assessment has not been paid, with the exception of \$22.10 and there remains due and owing to the United States the sum of \$256.90 plus interest. [12]

Wherefore, the Defendant, United States of America, demands judgment against plaintiff for

the amount of \$256.90 with interest and costs as allowed by law.

LAUGHLIN E. WATERS,  
United States Attorney;

EDWARD R. McHALE,  
Assistant United States Attorney, Chief, Tax  
Division;

BRUCE I. HOCHMAN,  
Assistant United States At-  
torney,

/s/ EDWARD R. McHALE,  
Attorneys for Defendant.

### EXHIBIT A

Los Angeles 12, California

September 21, 1953.

A:O:DH.

Room 747 Federal Bldg.

Mr. Walter F. Freeman,  
500 West Broadway,  
San Diego 1, California.

Dear Mr. Freeman:

Further reference is made to your request for a determination as to the status of your Naval retirement pay. The entire case has been carefully reviewed, and it is still the opinion of this office

that your retirement pay does not qualify for exemption under the provisions of section 22(b)(5) of the Internal Revenue Code.

In order that the retirement pay may be exempt from tax, it would have to come within the provisions of section 22(b)(5) of the Code, which provides in part that amounts received as a pension or similar allowance for personal injuries or sickness resulting from active service in the armed forces shall be exempt from tax.

The correspondence indicates that you believe that if you had made an election under the Career Compensation Act of 1949 to receive retired pay based on the laws in effect prior to the effective date of that act, you would be exempt from the tax. The records which you submitted disclose the following:

On June 26, 1939, you were transferred to the Fleet Reserve by reason of length of service. No mention was made in the Orders of any physical disability.

Under Orders of September 11, 1939, you were recalled to active duty.

On February 18, 1943, you received Orders releasing you from active duty, which the recommendation that you be placed on the retired list as you were "found not physical qualified to perform the duties of your rating at sea."

It appears that upon your release from active duty, you merely resumed the retired status that

you held prior to being recalled to active duty, which was based on years of service. There is no evidence that your retired status had been changed or that there was any change in the purpose for which the Navy Department paid the retirement benefits.

The Career Compensation Act of 1949 authorized the study of military personnel retired with physical disabilities,

(1) To ascertain whether the disability had its inception during a period of active service in the armed forces; and, if so

(2) To rate the disability under the same percentage factor used by the Veterans Administration.

The correspondence indicates that the Evaluation Board determined that the percentage of your disability was "zero" at the time of your retirement. This appears to mean that the nature of the disability was of the nonratable type, not having been due to any injury or sickness resulting from active service. This is further confirmed by letter of January 18, 1953, from the Department of the Navy which states in part that according to the records available in that office, you were "not retired for a physical disability incurred in active service."

Under the above circumstances, the retirement pay would not qualify for exemption under the laws in effect either prior to or subsequent to the enact-



ment of the Career Compensation Act, regardless of the election which was made at that time.

Very truly yours,

R. A. RIDDELL,  
District Director.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 26, 1955.

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[Title of District Court and Cause.]

### ANSWER TO COUNTERCLAIM

The plaintiff, in pro. per., answers the counterclaim, being the Third Section of defendant's answer, as follows:

1. Denies the allegations in paragraph 1 for lack of knowledge or information sufficient to form a belief.
2. Admits the allegation in paragraph 2.
3. Admits the allegations in paragraph 3 except that it is denied that there remains due and owing to the United States the sum of \$256.90 plus interest, if plaintiff's claim is allowed.

Wherefore, plaintiff will, if claim for exemption is disallowed, honor the demand for \$256.90 plus interest forthwith; but, if claim for exemption is allowed, prays that defendant take nothing for his counterclaim.

Dated: February 14, 1955.

/s/ WALTER F. FREEMAN,  
In Pro. Per.

Affidavit of service by mail attached.

[Endorsed]: Filed February 14, 1955. [16]

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[Title of District Court and Cause.]

SUBSTITUTION OF ATTORNEYS

Plaintiff hereby substitutes Philip Crittenden as his attorney of record in place of Walter F. Freeman, in Pro. Per.

Dated: May 24, 1955.

/s/ WALTER F. FREEMAN

I consent to the above substitution.

Dated: May 24, 1955.

/s/ WALTER F. FREEMAN.

Above substitution accepted.

Dated: May 24, 1955.

/s/ PHILIP CRITTENDEN.

[Endorsed]: Filed May 25, 1955. [18]

[Title of District Court and Cause.]

## PRETRIAL STIPULATION AND ORDER

### Section I—Admitted Facts

The facts are agreed upon by the parties, as follows:

1. Plaintiff filed his income tax return for the year 1952 on or before March 15, 1953, in which he reported income of \$2,064.56 and income tax withheld of \$22.10;

2. Plaintiff filed a Claim for Refund on the proper form furnished by the Department of Internal Revenue and within the time provided by law; said claim for refund was denied on May 24, 1954; said claim was based on the contention of plaintiff that the Retirement Pay received by plaintiff from the U. S. Navy was exempt from taxation as being retirement pay paid to a retired navy enlisted man who was retired for physical disability resulting from active service in the U. S. Navy.

3. That plaintiff received retirement pay from the U. S. Navy during the year 1952 in the sum of \$2,064.56.

4. That the sum of \$22.10 was withheld from plaintiff by the U. S. Navy as Income Tax Withheld; that if said retirement pay is taxable income, plaintiff [29] owes the sum of \$256.90 as Income Tax for the year 1952.

5. That plaintiff was an enlisted man in the U. S. Navy continuously from May 6, 1918, to June 26, 1939; that on June 26, 1939, plaintiff was transferred to the Fleet Reserve based on length of service.

6. That on September 11, 1939, plaintiff was recalled to active duty at Headquarters, 11th Naval District, San Diego, California; that at the time of his recall to active duty, plaintiff was given a physical examination and found to be physically fit for all duty.

7. That plaintiff was continuously on active duty from September 11, 1939, to February 18, 1943, during which entire time he was stationed on shore duty in the San Diego area. On February 18, 1943, he was released from active duty as the result of a physical examination; that said physical examination which was made on January 5, 1943, found that plaintiff had the following defects:

- (1) Arteriosclerosis, general #210
- (2) Vision 10/20 left, 16/20 right, corrected to 20/20 in each eye by glasses.
- (3) Varicose veins, legs and feet #249;

that said physical examination recommended that plaintiff was "not fit to perform active duty at sea or on foreign service" and "not physically qualified for any duty"; that such recommendation was approved by the Chief of the Bureau of Medicine and Surgery on the 21st day of January, 1943, and it was further recommended that plaintiff be re-

leased from active duty and placed on the retired list.

8. That by letter order dated the 6th day of February, 1943, the Chief of Naval Personnel directed that in accordance with the recommendation of the Chief of the Bureau of Medicine and Surgery dated January 21, 1943, plaintiff be released from active duty and placed on the Retired List on the 1st day of the month following his release from active duty under the authority of the Naval Reserve Act of 1938.

9. That in accordance with said letter order, plaintiff was released from active duty on the 18th day of February, 1943, and placed on the retired list as of the 1st day of March, 1943. [30]

10. That, after the adoption of the 1949 Career Compensations Act, the Physical Review Council of the Bureau of Personnel assigned to plaintiff a Percentage of Disability of Zero (00) and requested plaintiff to elect one of the three options available.

11. That, in accordance with said request, plaintiff first elected Option "B" which computed compensation based on the new compensation established by the 1949 Career Compensations Act; that, subsequently, plaintiff changed said election to elect Option "C" which computed compensation based on the laws in effect prior to the 1st day of October, 1949, the effective date of the 1949 Career Compensation Act; that, as a result of said corrected election, all retirement pay received by plaintiff

since the 1st day of October, 1949, has been based on the laws in effect prior to the 1st day of October, 1949, the effective date of the 1949 Career Compensation Act.

12. That on or about the 14th day of February, 1956, plaintiff filed an application with the Board for Correction of Naval Records, Department of the Navy, for the purpose of having the Percentage of Disability assigned to plaintiff by the Bureau of Personnel corrected; that by letter dated the 14th day of August, 1956, the Board for Correction of Naval Records denied a hearing on such application of plaintiff on the basis that the disability rating of 0% assigned by the Physical Review Council was correct and proper and that plaintiff's medical records do not indicate that plaintiff was suffering from a disability ratable under the Schedule for Rating Disabilities in current use by the Veterans Administration at the time of plaintiff's retirement on the 1st day of March, 1943.

13. That plaintiff's retirement pay is based on over 24 years of service, that no portion of which pay is computed on the basis of a disability factor.

14. That plaintiff's retirement pay since the 1st day of October, 1949, has been based on the laws in effect prior to the 1949 Career Compensations Act under the provision of said Act which permits retired personnel to so elect.

15. That plaintiff's retirement pay is exempt from income tax if said retirement pay is received

“for personal injuries or sickness resulting from active service in the armed forces of any country” under Section 22 (b) (5) of the [31] Internal Revenue Code, as amended by section 113 of the Revenue Act of 1942; that if plaintiff’s retirement pay does not qualify under said section 22 (b) (5) of the Internal Revenue Code, as amended, said retirement pay is taxable income to plaintiff.

16. That plaintiff has exhausted his administrative remedies with the Department of the Navy; that plaintiff has exhausted his administrative remedies with the Treasury Department prior to filing this action.

### Section II—Issues

Issue of Law:

1. Is plaintiff’s retirement income for the year 1952 taxable under the Federal Income Tax laws?

### Section III—Documentary Evidence

It is stipulated between the parties hereto that the following documents may be admitted into evidence:

Plaintiff’s Exhibits:

1. Medical record of plaintiff.
2. Copy of orders dated 6 February, 1943, directing placement of plaintiff on the Retired List of the Navy.

3. Letter from Board for Correction of Naval Records dated 14 August, 1956, with copy of opinion of the Chief, Bureau of Medicine and Surgery, dated 24 July, 1956, attached.

4. Copy of election made February 23, 1951, electing Method B.

5. Copy of election made June 19, 1951, electing Method C.

6. Payroll Computing Form dated the 30th day of December, 1955, showing adjustment of pay retroactive to October 1, 1949, to reduce pay to that entitled under Election C.

7. Orders transferring plaintiff to Fleet Reserve dated 26 June, 1939.

8. Orders recalling plaintiff to active duty dated 11 September, 1939. [32]

9. Copy of orders dated February 18, 1943, releasing plaintiff from active duty.

10. Copy of orders dated March 1, 1943, placing plaintiff on Retired List.

11. Plaintiff's service record.

12. Plaintiff's 1952 Income Tax Return.

/s/ PHILIP CRITTENDEN,

Attorney for Plaintiff.

LAUGHLIN E. WATERS,

United States Attorney;

By /s/ REMBERT T. BROWN,

Attorney for Defendant.



Dated: November 8, 1956.

It Is So Ordered:

/s/ JACOB WEINBERGER.

[Endorsed]: Filed November 8, 1956. [33]

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PLAINTIFF'S EXHIBIT No. 2

Pers-663-HVP

MM 151 61 65

February 6, 1943.

From: The Chief of Naval Personnel.

To: The Medical Officer in Command, Naval Hospital, San Diego, Calif.

Subject: Freeman, Walter Frederick, CY(PA), F-4-D, USNR—Placing on the Retired List of the Navy.

References:

(a) Report of physical examination January 5, 1943.

(b) Bureau of Medicine and Surgery's recommendation dated January 21, 1943.

(c) Naval Reserve Act of 1938.

(d) U.S.N. Travel Instructions, Article 2503(12).

1. In accordance with reference (b), which is approved, it is directed that the subject man be

placed on the Retired List of the Navy by the authority contained in reference (c).

2. This man should be ordered to his home and consider himself released from active duty upon arrival. Place him on the Retired List on the first day of the month following release to inactive duty. Furnish the Field Branch, Bureau of Supplies and Accounts (Master Accounts Division), Navy Department, Cleveland, Ohio, four (4) certified copies of your letter directing retirement.

3. Original of page 9, showing dates of release and retirement, reason for such action and present home address, should be placed in service record and duplicate forwarded to this Bureau.

4. He is Not physically qualified for mobilization ashore.

RANDALL JACOBS,  
The Chief of Naval Personnel.

H. L. NAFF,  
By Direction.

Certified by:

/s/ J. L. HOLLOWAY, JR.,  
Vice Admiral, USN, Chief of  
Naval Personnel.

[Endorsed]: Filed November 2, 1956.

PLAINTIFF'S EXHIBIT No. 3

Department of the Navy  
Board for Correction of Naval Records  
Washington 25, D. C.

SMF:frs

14 August, 1956.

Mr. Walter Frederick Freeman,  
c/o Philip Crittenden, Esq.,  
602 Scripps Building,  
San Diego 1, California.

My Dear Mr. Freeman:

Reference is made to your application for correction of your naval record, under the provisions of Section 207 of the Legislative Reorganization Act of 1946, as amended (65 Stat. 655).

Administrative regulations and procedures established by the Secretary of the Navy for the guidance of this Board provide that the burden of proof is on a Petitioner to show by documentary evidence that an error has been made, or an injustice has been suffered. Further, a hearing by the Board may be denied when a Petitioner has failed to show that an entry or omission in his naval record was improper or unjust under then existing standards of naval law, administration, and practice.

In view of the fact that your application presented disputed questions of medical fact the records in your case were referred to the Chief, Bu-

reau of Medicine and Surgery for an advisory opinion. A copy of the opinion of the Chief, Bureau of Medicine and Surgery dated 24 July, 1956, is enclosed for your information.

Preliminary examination of your naval record and review of the material submitted by you fails to establish a sufficient basis for further action by this Board.

It is not the intention of the Board to imply that a subsequent review of your case may not be had. As stated above, however, the burden is on you to show that an error or injustice has occurred.

In the absence of additional material evidence, no further action on your application is contemplated.

Sincerely yours,

/s/ F. W. BREW,

Assistant Executive Secretary, by Direction of the  
Chairman.

Encl:

Chief, BuMed ltr dated 24 July, 1956.

Copy to:

Mr. Philip Crittenden,

Attorney at Law.

BUMED-3

Freeman, Walter Frederick

151 61 65

24 July, 1956.

First Endorsement on BCNR ltr SMF:hkh dated  
16 May, 1956.

From: Chief, Bureau of Medicine and Surgery.

To: Chairman, Board for Correction of Naval Records.

Subj: Walter Frederick Freeman, 151 61 65, YNSC,  
USN (Retired); Advisory opinion in the  
case of.

1. Returned.

2. A review of petitioner's records reveals that he was transferred to the Fleet Reserve and released from active duty on 26 June, 1939. He was recalled to active duty on 11 September, 1939, released from active duty on 18 February, 1943, and placed on the retired list by reason of physical disability on 1 March, 1943.

3. Petitioner's medical records reveal that he was found not physically qualified for any duty as the result of a physical examination conducted on 5 January, 1943. The report of the physical examination listed petitioner's physical defects as general arteriosclerosis, defective vision and varicose veins of the legs and feet. The Bureau of Medicine and Surgery concurred in the findings of the medical examiners and recommended that petitioner be released from active duty and placed on the retired list.

4. On 16 October, 1950, the Physical Review Council assigned petitioner a disability rating of 0% under the provisions of Section 411 of the Career Compensation Act of 1949.

5. A review of petitioner's medical records reveals that prior to his retirement on 1 March, 1943, there was no evidence of renal, cardiac, or cerebral complications as the result of his generalized arteriosclerosis. There was, however, evidence of generalized arteriosclerosis in the lower extremities. The symptoms and physical findings were not of such character as to be ratable under the Schedule for Rating Disabilities in current use by the Veterans Administration. Petitioner's defective vision was slight and was correctable to 20/20. Petitioner presented mild asymptomatic varicosities of the superficial veins of the lower legs and feet.

6. From a review of petitioner's medical records it is the opinion of this Bureau that the disability rating of 0% assigned by the Physical Review Council was correct and proper and that petitioner's medical records do not indicate that he was suffering from a disability ratable under the Schedule for Rating Disabilities in current use by the Veterans Administration at the time of his retirement on 1 March, 1943.

I. L. V. NORMAN,

Assistant Chief for Personnel and Professional Operations.

[Endorsed]: Filed November 2, 1956.

PLAINTIFF'S EXHIBIT No. 4

F-129

Department of the Navy  
Bureau of Naval Personnel  
Washington 25, D. C.

In Reply Refer to:

Pers-E354-JDB:js

151 61 65

6 Dec., 1950.

From: Chief of Naval Personnel.

To: Walter Frederick Freeman, 151 61 65, YNC,  
USN (Ret.).

Via: Chief, Field Branch, Bureau of Supplies and  
Accounts, Cleveland 14, Ohio.

Subj: Election as to Retirement Pay Benefits under  
the Provisions of the Career Compensation Act  
of 1949 (Public Law 351-81st Congress).

Ref:

(a) Subject Law.

Encl:

- (1) Excerpts from subject law: Sec. 402  
(d), Sec. 402 (h) and Sec. 411.
- (2) Information Bulletin.

1. In accordance with Section 411 of reference  
(a) and pursuant to regulations prescribed by the  
President of the United States, the Secretary of  
the Navy has determined your percentage of dis-  
ability. This determination and other applicable  
factors of service credit are as follows:

Percentage of Disability: Zero (00).

Years of Active Service: Twenty-four (24).

Highest Rating satisfactorily held for retirement pay purposes: Chief Yeoman.

1. Exact gross payment information applicable in accordance with reference (a) and the above factors will be endorsed hereon by the disbursing officer having custody of your retired pay record.

/s/ H. C. BERNET,  
By Direction.

List No. FR3.

XRA:LW:zd

151 61 65

First Endorsement on BuPers ltr Pers-E354-JDB:  
js of 6 Dec., 1950.

1. In accordance with reference (a) of basic letter you are entitled to receive retired pay computed, At Your Election, by one of the following methods:

\*Method A: Monthly basic pay of \$. . . . . for . . . . . with over . . . . years service for basic pay purposes multiplied by . . . .% (disability), which would amount to \$. . . . . monthly gross retired pay. (Not to exceed 75%.)

Method B: Monthly basic pay of \$279.30 for YNC with over 22 years service for basic pay purposes

---

\*Since percentage of disability is zero% you are not entitled to this method of computation.



multiplied by 60% ( $2\frac{1}{2}$  x years active service) which would amount to \$167.58 monthly gross retired pay. (Not to exceed 75%.)

Method C: Monthly gross retired pay of \$163.35 based on laws in effect prior to 1 October, 1949.

2. Your account was mechanically adjusted to \$167.58 under Method "B" effective 1 October, 1949. If you desire to continue to receive this amount each month, you should elect Method "B." Unless your election is made and returned to this office within sixty days, your monthly gross pay will revert to \$163.35 (Method "C") and checkage for the difference between Methods "B" and "C" retroactive to 1 October, 1949, will be entered against your account and liquidated at the rate of one-half your gross pay each month until the difference has been cleared.

3. Indicate your election in the space below. Sign three copies of the election form and return them in the enclosed postage free envelope.

/s/ J. B. WARNER,

By Direction, Chief, Field Branch, Bureau of Supplies and Accounts, Cleveland 14, Ohio.

Date: February 23, 1951.

From: Freeman, Walter Frederick, 151-61-65,  
YNC, USN, Retired.

To: Secretary of the Navy.

Via: Chief, Field Branch.

Subj: Election of pay under Public Law 351-81st  
Congress.

1. I elect to receive retired pay in accordance with Method B under which I understand my gross pay will be \$167.58.

2. I understand that this election, once made, is final and conclusive for all purposes.

/s/ WALTER FREDERICK FREEMAN,  
500 West Broadway.

(Rank or Rating): YNC.

(Service Number): 151-61-65.

City: San Diego.

(State): California.

\*For your records.

Enl Ret 1

[Endorsed]: Filed November 2, 1956.

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PLAINTIFF'S EXHIBIT No. 5

(Duplicate)

XRA:LW :zd

151 61 65

First Endorsement on BuPers ltr Pers-E354-JDB:  
js of 6 Dec., 1950.

1. In accordance with reference (a) of basic letter you are entitled to receive retired pay com-

puted, At Your Election, by one of the following methods:

\*Method A: Monthly basic pay of \$. . . . . for . . . . . with over . . . . years service for basic pay purposes multiplied by . . . .% (disability) which would amount to \$. . . . . monthly gross retired pay. (Not to exceed 75%.)

Method B: Monthly basic pay of \$279.30 for YNC with over 22 years service for basic pay purposes multiplied by 60% ( $2\frac{1}{2}$  x years active service) which would amount to \$167.58 monthly gross retired pay. (Not to exceed 75%.)

Method C: Monthly gross retired pay of \$163.35 based on laws in effect prior to 1 October, 1949.

2. Your account was mechanically adjusted to \$167.58 under Method "B" effective 1 October, 1949. If you desire to continue to receive this amount each month, you should elect Method "B." Unless your election is made and returned to this office within sixty days, your monthly gross pay will revert to \$163.35 (Method "C") and checkage for the difference between Methods "B" and "C" retroactive to 1 October, 1949, will be entered against your account and liquidated at the rate of one-half your gross pay each month until the difference has been cleared.

---

\*Since percentage of disability is zero% you are not entitled to this method of computation.

3. Indicate your election in the space below. Sign three copies of the election form and return them in the enclosed postage free envelope.

/s/ J. B. WARNER,  
By Direction, Chief, Field Branch, Bureau of Supplies and Accounts, Cleveland 14, Ohio.

Date: June 19, 1951.

From: Freeman, Walter Frederick, 151-61-65,  
YNC, USN, Retired.

To: Secretary of the Navy.

Via: Chief, Field Branch.

Subj: Election of pay under Public Law 351-81st  
Congress.

1. I elect to receive retired pay in accordance with Method C under which I understand my gross pay will be \$163.35.

2. I understand that this election, once made, is final and conclusive for all purposes.

/s/ WALTER FREDERICK FREEMAN,  
500 West Broadway.

(Rank or Rating): YNC.

(Service Number): 151-61-65.

City: San Diego.

(State): California.

Enl Ret 1

[Endorsed]: Filed November 2, 1956.

U. S. NAVY FINANCE CENTER  
CLEVELAND 14, OHIO

BLOCK TYPE 2

BLOCK NUMBER	
EXP. ACCT. CODE	02
STOP SERV. NO.	151 61 65
START SERV. NO.	151 61 65

STATISTICAL CODES (Navy Finance Center use only)

DESTINATION	SAVED PAY CLASSIFICATION	FAMILY STATUS	SERVICE	RANK	CORPS	SPECIAL
	1 23	E	24	56	9	

Walter F. FREEMAN  
1501 Fifth Ave.  
San Diego, Calif.

PREPARED BY	67/40
DATE	12/30/55
ACTION EFFECTIVE	January 1956
MONTH	YEAR

ITEMS	MO. GROSS PAY	ACTION CODE	TAXABLE INCOME	WITHHOLDING TAX	ALLOTMENTS	CREDITS	DEBITS	NET PAY
MENT	191.88	05	191.88	24.20				167.68
MT. CHECK								
MENT CHECK 1/56	180.07	01					65.27	114.80

Totals will be reported on your Treasury Department Withholding Form W-2.

ALLOTMENTS	
STOP	START

ON adjustment  
letter was received 12/30/55.  
in accordance with Bureau of Naval Personnel letter  
B-51/aeg of 11/8/55 and your election of Method C,  
your retired pay is reduced to Method C retroactive to  
1/49, resulting in an overpayment of 391.42 which you have requested to have  
liquidated in 6 months.

*In your letter received 12/13/55*

65.27 will be deducted in 1/56 and 65.23 for the period 2/56 - 6/56.  
All pay will be restored in 7/56.

bit difference in pay 163.35 vs 167.58 10/1/49 - 4/30/52 131.13  
bit difference in pay 169.88 vs 174.28 5/1/52 - 3/31/55 154.00  
bit difference in pay 180.07 vs 191.88 4/1/55 - 12/31/55 106.29

391.42 total debit

[Back]

bit overpayment @ 65.27 1/56 - 65.27

Refund of tax withheld for prior years should be requested from your local Director of Internal Revenue.

ROLL COMPUTING FORM

4ND-3363 (NAVY-FC/1266 Rev. 3-55)

Endorsed: Filed November 2, 1955



PLAINTIFF'S EXHIBIT No. 7

CA35/P16-4/MM

U. S. S. Indianapolis

San Pedro, California.

26 June, 1939.

From: Commanding Officer.

To: Freeman, Walter Frederick, No. 151-61-65,  
CY(PA), U.S.N.

Subject: Orders—Transfer to Fleet Reserve, Class  
F-4-D, and release from active duty.

Reference: (a) BuNav Ltr. Nav-66-HJP, dated 23  
May, 1939.

1. By direction of the Bureau of Navigation you are hereby transferred from the Regular Navy to inactive status in the Fleet Reserve, Class F-4-D. You are released from all active duty effective this date. After transfer you are free to accept employment and to take up your residence wherever you desire, but you will remain subject to the rules and regulations prescribed by competent authority for the government of the Fleet Reserve Force. You are required to keep U. S. Navy uniform on hand and in good condition at all times for use in case you are ordered to active duty. You will keep yourself in readiness for service in case of war or national emergency.

2. The Commandant, Eleventh Naval District, San Diego, California, will be your Commanding

Officer while on inactive duty status and all requests for active duty, etc., will be made to him. You will keep the Commandant, Eleventh Naval District, informed of your home address; will answer promptly all letters addressed to you by proper authority; and will inform the Commandant, Eleventh Naval District, of any change in your health which might prevent service at sea in time of war. You have given as your address on transfer to the Fleet Reserve as:

Cecil Hotel, Los Angeles, California.

3. Fleet Reservists are encouraged to maintain touch with the Recruiting Stations, Naval Station, and other Naval activities nearest their homes.

4. Your Fleet Reserve pay will be forwarded to you monthly by check, at the address as given by you above, by the Disbursing Officer, Bureau of Supplies and Accounts (Retainer Pay Division), Navy Department, Washington, D. C., and you will inform the Disbursing Officer of any change in the above address.

/s/ J. F. SHAFROTH.

Copy to: BuNav

Comdt. 11th NavDist

[Endorsed]: Filed November 2, 1956.



PLAINTIFF'S EXHIBIT No. 8

Commandant's Office  
Eleventh Naval District  
San Diego, California

11 September, 1939.

Refer to No.:

QR/ND11/B-We

From: Commandant.

To: Freeman, Walter Frederick, CY(PA) 151 61  
65 F4d, USFR.

Subject: Orders—Recall to active duty.

Reference:

(a) Bunav despatch 6310 1215 of 10 Sep.,  
1939.

(b) Your request dated 10 Sept., 1939.

1. Having requested active duty in the Eleventh Naval District, reference (b), you are hereby authorized to report to the District Medical Officer, U. S. Naval Hospital, San Diego, California, for a physical examination to determine your fitness for active duty.

2. If found not physically qualified for active duty, you will return to your home and return these orders to the Commandant for cancellation.

3. If found physically qualified for active duty, you will report immediately to the District Personnel Officer, Headquarters Eleventh Naval District, for active duty.

4. Present these orders to the District Medical Officer for the proper endorsement. Your health record can be obtained at that office.

5. Forward your Continuous Service Certificate to the Commandant in order that necessary entries may be made therein while you are on active duty.

6. Your records and accounts while on active duty will be carried at Eleventh Naval District Headquarters.

/s/ C. W. FLYNN,  
By Direction.

Copy to: BuNav  
S&A (RPD)  
Personnel Office—11th ND  
Disb. Off. RIGEL  
COM 11

U. S. Naval Hospital  
San Diego, California

11 September, 1939.

First Endorsement

From: Medical Officer in Command.

To: Freeman, Walter Frederick, CY, F-4-D, FNR.

1. Examined this date and found fit for all duty.

/s/ H. M. MAVEETY,  
Lt. Comdr. (MC), USN,  
By Direction.

P16-4/MM/QR

(B-bt)

Hdqtrs., 11th Naval District  
San Diego, California

11 September, 1939.

Second Endorsement

From: Commandant.

To: Freeman, Walter Frederick, No. 151 61 65,  
CY(PA), USFR.

1. Reported for active duty at 1000, this date.

/s/ C. W. FLYNN,  
By Direction.

[Endorsed]: Filed November 2, 1956.

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PLAINTIFF'S EXHIBIT No. 9

NH16/P19-2/QR1

CWF/les

U. S. Naval Hospital  
San Diego, California

February 18, 1943.

From: The Medical Officer in Command.

To: Freeman, Walter Frederick, 151 61 65, CY  
(PA) USN.

Subject: Orders—Release from active duty and  
recommended to be placed on the retired list,  
U.S.N.

## Reference:

(a) BuPers Ltr. Pers-663-HVP MM 151  
61 65 of 2-6-43.

(b) Article H-96-04 Bu Nav Manual.

1. In accordance with reference (a), you are this date released from all active duty in the U. S. Naval Service.

2. In accordance with instructions contained in reference (b), you have been examined and found Not physically qualified to perform the duties of your rating at sea; it has, therefore, been recommended that you be placed on the Retired List.

3. Upon receipt of these orders and when directed by proper authority, you will proceed to your home, Army and Navy Y.M.C.A., San Diego, California, and report to the Commandant, Eleventh Naval District, San Diego, California, in writing informing him of your arrival and giving him your correct name, rate, service number and address.

4. You must at all times keep the Commandant of the Naval District in which you reside informed of your correct home address. Any change therein shall also be reported to the Bureau of Supplies and Accounts (Retainer Pay Division), Navy Department, Washington, D. C.

5. You will answer promptly all letters addressed to you by proper authority. Request to leave the Continental limits of the United States, by permis-

sion, shall be addressed to the Chief of Naval Personnel via the Commandant of your district.

GEO. C. THOMAS,

C. W. FEYH,

By Direction.

Certified a true copy.

/s/ W. A. HUNTER,

Lt. (jg), USN.

Copy to:

BuPers

Com-11

[Endorsed]: Filed November 2, 1956.

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PLAINTIFF'S EXHIBIT No. 10

In Reply Refer to:

ND11/QR1/MM

Serial Q-65195(Wr)

Commandant's Office  
Eleventh Naval District  
San Diego, California

March 1, 1945.

From: The Commandant.

To: Freeman, Walter Frederick, 151 61 65, CY  
(PA), F4D, USNR, Army & Navy YMCA. San  
Diego, California.

Subject: Retirement as a result of physical examination.

References:

- (a) BuPers ltr Pers-603-HVP, dated Feb. 6, 1943.
- (b) Naval Reserve Act of 1938.

1. Reference (a) authorizes your retirement in accordance with the recommendation that you are not physically qualified to perform the duties of your rating at sea, therefore, you are placed on the retired list of the Navy as of this date.

2. For your information, the following is quoted from reference (b): “\* \* \* Provided further, that enlisted men heretofore or hereafter transferred to the Fleet Reserve after sixteen years’ or more service in the Regular Navy, who are not physically qualified upon such examination, shall be transferred to the retired list of the Regular Navy, with the pay they are then receiving.”

3. Report all changes of your address to the Bureau of Supplies and Accounts (Retainer Pay Division), Washington, D. C., via the Commandant, Eleventh Naval District, in triplicate. Such reports must give the date of your retirement and be signed with your full name; they should reach the Commandant not later than the 15th of the month.

4. You are Not physically qualified for mobilization ashore.

G. M. HAVENSCROFT,  
Acting Commandant.

C. H. PERDUN,  
By Direction.

cc: S&A RPD (4)

BuNav

M & S

File

Orig. to man

DMO

Serial

[Endorsed]: Filed November 2, 1956.





# EMPLOYEE'S OPTIONAL U. S. INDIVIDUAL INCOME TAX RETURN

1952  
CALENDAR YEAR

IF YOU USE THIS FORM, THE DIRECTOR OF INTERNAL REVENUE WILL COMPUTE YOUR TAX  
(IF YOU WISH TO COMPUTE YOUR OWN TAX, USE FORM 1040)

Do not write in this space

BE SURE TO  
PAY ALL YOUR  
TAXES  
WITHHOLDING  
STATEMENTS  
Forms W-2

Name Freeman Walter F  
(PLEASE PRINT. If this is a joint return of husband and wife, use first names of both)  
HOME ADDRESS 500 West Broadway  
(PLEASE PRINT. Street and number or rural route)  
San Diego 1 California  
(City, town, or post office) (Postal zone number) (State)  
Social Security No. 560-32-2359 Occupation U.S.N. Retired

Serial No. 210089600

1. List your name. If your wife (or husband) had no income, or if this is a joint return, list also her (or his) name.

Walter F. Freeman  
(Your name)

Check below if on Dec. 31, 1952, you or your wife were—

65 or over  Blind   
65 or over  Blind

On lines A and B below—  
If neither 65 nor blind write the figure 1  
If either 65 or blind write the figure 2  
If both 65 and blind write the figure 3

Number of exemptions for you ..... 1  
Number of her (or his) exemptions ...

C. List names of your children (including stepchildren and legally adopted children) with 1952 gross incomes of less than \$600 who received more than one-half of their support from you in 1952. See Instruction 1C.

D. Enter number of exemptions claimed for close relatives listed in Schedule A on other side..... 0

E. Enter total number of exemptions claimed in A to D above..... 1

Enter number of children listed ..... 0  
Enter number of exemptions claimed for close relatives listed in Schedule A on other side..... 0  
Enter total number of exemptions claimed in A to D above..... 1

2. Fill in below the information from each of your 1952 Withholding Statements (Forms W-2). If this is a joint return, enter information from withholding statements of both husband and wife.

Print Employer's Name	Where Employed (City and State)	Total Wages	Income Tax Withheld
		\$ 2064 56	\$ 22 10
Enter totals.....		\$ 2064 56	\$ 22 10

3. Enter total of interest, dividends, and any wages not shown on Forms W-2. If a joint return enter total of such income of both husband and wife..... 0 00

4. Add items 2 and 3. If total is \$5,000 or more, use Form 1040..... \$ 2064 56

If item 4 includes income of both husband and wife, show:  
husband's income \$.....; wife's income \$.....

Have you any prior year Federal tax for which you have been billed? (Yes or No) No Is your wife (or husband) making separate return for 1952? (Yes or No) No If "yes," write her (or his) name.....

Have you filed a return for a prior year, state latest year 1951. Where filed? Los Angeles Cal.  
I declare under the penalties of perjury that the foregoing statements are true to the best of my knowledge and belief; and that all 1952 income is reported hereon.

Name of person, other than taxpayer, preparing this return (Date) (Address)

Walter F. Freeman 1-29-52  
(Signature of taxpayer) (Date)

(Signature of taxpayer's wife or husband if this is a joint return) (Date)

To assure any benefits of split-income provisions, husband and wife must include all their income and, even though only one has income, BOTH MUST SIGN.

THIS SPACE FOR DIRECTOR'S USE ONLY  
TAX DUE OR REFUND WILL BE COMPUTED BY DIRECTOR

Credits.....	\$ 22 10
Tax.....	\$
Balance due or refund.....	\$
Total.....	\$

Endorsed: Filed November 2, 1956.



United States District Court for the Southern  
District of California, Southern Division

No. 1661-W, Sou. Div., Civil

WALTER F. FREEMAN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

FINDINGS OF FACT, CONCLUSION OF  
LAW AND JUDGMENT

The above case came on regularly for trial on July 29, 1957, before the Honorable Jacob Weinberger, United States District Judge, sitting without a jury, the plaintiff appearing through his counsel, Philip Crittenden, and the defendant appearing through its counsel, Laughlin E. Waters, United States Attorney; Edward R. McHale, Assistant United States Attorney, Chief, Tax Division, and Rembert T. Brown, Assistant United States Attorney, by Rembert T. Brown, and a stipulation of facts having been entered into, and documentary evidence having been received, and the arguments of counsel both oral and written having been presented, the Court now finds as follows:

Findings of Fact

I.

Plaintiff, Walter F. Freeman, is a resident of the Southern District of California. [85]

## II.

Plaintiff is now, and at all times herein pertinent was a citizen of the United States of America.

## III.

Plaintiff filed his income tax return for the year 1952 on or before March 15, 1953, in which he reported income of \$2,064.56 and income tax withheld of \$22.10.

## IV.

Plaintiff filed a Claim for Refund on the proper form furnished by the Department of Internal Revenue and within the time provided by law; said claim for refund was denied on May 24, 1954; said claim was based on the contention of plaintiff that the retirement pay received by plaintiff from the U. S. Navy was exempt from taxation as being retirement pay paid to a retired navy enlisted man who was retired for physical disability resulting from active service in the U. S. Navy.

## V.

Plaintiff received retirement pay from the U. S. Navy during the year 1952 in the sum of \$2,064.56.

## VI.

The sum of \$22.10 was withheld from plaintiff by the U. S. Navy as income tax withheld. If said retirement pay is taxable income, plaintiff owes the sum of \$256.90 as income tax for the year 1952.

## VII.

Plaintiff was an enlisted man in the U. S. Navy continuously from May 6, 1918, to June 26, 1939.

On June 26, 1939, plaintiff was transferred to the Fleet Reserve based on length of service.

### VIII.

On September 11, 1939, plaintiff was recalled to active duty at Headquarters, 11th Naval District, San Diego, California. [86] At the time of his recall to active duty, plaintiff was given a physical examination and found to be physically fit for all duty.

### IX.

Plaintiff was continuously on active duty from September 11, 1939, to February 18, 1943, during which entire time he was stationed on shore duty in the San Diego area. On February 18, 1943, he was released from active duty as the result of a physical examination. Said physical examination, which was made on January 5, 1943, found that plaintiff had the following defects:

- (1) Arteriosclerosis, general No. 210;
- (2) Vision, 10/20 left; 16/20 right; corrected to 20/20 in each eye by glasses;
- (3) Varicose veins, legs and feet No. 249.

Said physical examination recommended that plaintiff was "not fit to perform active duty at sea or on foreign service" and "not physically qualified for any duty." Such recommendation was approved by the Chief of the Bureau of Medicine and Surgery on the 21st day of January, 1943, and it was further recommended that plaintiff be released from active duty and placed on the retired list.

## X.

By letter order dated the 6th day of February, 1943, the Chief of Naval Personnel directed that in accordance with the recommendation of the Chief of the Bureau of Medicine and Surgery dated January 21, 1943, plaintiff be released from active duty and placed on the Retired List on the 1st day of the month following his release from active duty under the authority of the Naval Reserve Act of 1938.

## XI.

In accordance with said letter order, plaintiff was released from active duty on the 18th day of February, 1943, and [87] placed on the retired list as of the 1st day of March, 1943.

## XII.

After the adoption of the 1949 Career Compensation Act, the Physical Review Council of the Bureau of Personnel assigned to plaintiff a Percentage of Disability of Zero (00) and requested plaintiff to elect one of the three options available.

## XIII.

In accordance with said request, plaintiff first elected Option "B" which computed compensation based on the new compensation established by the 1949 Career Compensation Act. Subsequently, plaintiff changed said election to elect Option "C" which computed compensation based on the laws in effect prior to the 1st day of October, 1949, the effective date of the 1949 Career Compensation

Act. As a result of said corrected election, all retirement pay received by plaintiff since the 1st day of October, 1949, has been based on the laws in effect prior to the 1st day of October, 1949, the effective date of the 1949 Career Compensation Act.

#### XIV.

On or about the 14th day of February, 1956, plaintiff filed an application with the Board for Correction of Naval Records, Department of the Navy, for the purpose of having the Percentage of Disability assigned to plaintiff by the Bureau of Personnel corrected. By letter dated the 14th day of August, 1956, the Board for Correction of Naval Records denied a hearing on such application of plaintiff on the basis that the disability rating of 0% assigned by the Physical Review Council was correct and proper and that plaintiff's medical records do not indicate that plaintiff was suffering from a disability ratable under the Schedule for Rating Disabilities in current use by the Veterans Administration at the time of plaintiff's retirement on the 1st day of March, 1943.

#### XV.

Plaintiff's retirement pay is based on over 24 years of [88] service; no portion of which pay is computed on the basis of a disability factor.

#### XVI.

Plaintiff's retirement pay since the 1st day of October, 1949, has been based on the laws in effect prior to the 1949 Career Compensation Act under

the provisions of said Act which permits retired personnel to so elect.

#### XVII.

Plaintiff has exhausted his administrative remedies with the Department of the Navy. Plaintiff has exhausted his administrative remedies with the Treasury Department prior to filing this action.

#### XVIII.

No part of the retirement pay received by the plaintiff from the United States Navy during the year 1952 was received as a pension, annuity or similar allowance for personal injuries or sickness resulting from active service in the United States Navy. The entire amount of said retirement pay was received by the plaintiff as compensation for length of service in the United States Navy.

#### XIX.

Any conclusion of law herein which is deemed to be a fact is hereby found as a fact and incorporated herein as a finding of fact.

#### Conclusions of Law

From these facts the Court concludes as follows:

##### I.

This Court has jurisdiction of this controversy and of the parties hereto. [89]

##### II.

Section 22(b) of the Internal Revenue Code of 1939, as amended by Section 113 of the Revenue Act of 1942, provides in pertinent part:



“The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

“(5) \* \* \* amounts received as a pension, annuity or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country.”

III.

An exemption from a federal internal revenue tax is a matter of legislative grace and consequently statutes providing for exemptions from such tax are to be strictly construed.

IV.

The fact that a person is permanently incapacitated for further active service in the armed forces is not determinative of the exemption status of the retirement pay received by him under the provisions of the federal internal revenue laws.

V.

The retirement pay received by plaintiff during the year 1952, being compensation for length of service, and not a pension, annuity or other allowance for personal injuries or sickness resulting from active service in the armed forces, was therefore not excludable from his taxable income under the provisions of Section 22(b)(5) of the Internal Revenue Code of 1939, as amended.

## VI.

Any finding of fact which is deemed to be a conclusion of law is hereby concluded as a matter of law and incorporated herein as a matter of law. [90]

## VII.

Defendant is entitled to judgment that the plaintiff take nothing by reason of this action, that the complaint be dismissed with prejudice, and that defendant have judgment on its counterclaim against the plaintiff for the sum of \$256.90, together with interest and costs as allowed by law.

## Judgment

In accordance with the foregoing findings of fact and conclusions of law, it is ordered, adjudged and decreed:

That the plaintiff take nothing by his complaint; that the complaint may be and is dismissed with prejudice; and that the defendant have judgment on its counterclaim for and shall recover from the plaintiff the amount of \$332.57, together with the amount of its costs to be taxed by the Clerk of this Court in the sum of \$20, with interest upon the total from this date until paid, according to law.

Dated: Feb. 12, 1958.

/s/ JACOB WEINBERGER,  
United States District Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 12, 1958.

Entered February 13, 1958. [91]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that Walter F. Freeman, plaintiff above-named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on February 13, 1958.

February 27, 1958.

/s/ PHILIP CRITTENDEN,  
Attorney for Plaintiff.

[Endorsed]: Filed March 10, 1958. [97]

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[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

A. The foregoing pages numbered 1 to 99, inclusive, containing the original:

Complaint.

Answer and Counterclaim.

Answer to Counterclaim.

Substitution of Attorneys.

Defendant's Pretrial Memorandum.

Plaintiff's Pretrial Memorandum.

(Copy) Minute Order, 11/2/56.

Pretrial Stipulation and Order.

Defendant's Trial Brief.

Plaintiff's Trial Brief.

(Copy) Minute Order, 11/21/56.

Defendant's Brief re Jurisdiction of Court.

Plaintiff's Brief on Jurisdiction.

Minute Order, 5/20/57.

Defendant's Supplemental Brief.

Minute Order, 6/13/57.

Plaintiff's Supplemental Brief.

Minute Order, 7/2/57.

Defendant's supplemental Brief re the meaning of "Sickness resulting from active service," etc.

Minute Order, 7/29/57.

Minute Order, 8/6/57.

Notice of Objections to Findings of Fact, Conclusions of Law, proposed by Defendants.

Findings of Fact, Conclusions of Law and Judgment.

Defendant's Computation of the amount of Judgment, etc.

Notice of Appeal.

Designation of Record.

B. Plaintiff's Exhibits 1 to 12, inclusive.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60, has been paid by appellant.



United States Court of Appeals  
for the Ninth Circuit

No. 15981

WALTER F. FREEMAN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S STATEMENT ON  
POINTS ON APPEAL

Comes now the appellant herein and, pursuant to Rule 17, Rules of the United States Court of Appeals for the Ninth Circuit, hereby makes his statement of the point on which he intends to rely, as follows:

That the Hon. Jacob Weinberger, Judge of the United States District Court, Southern District of California, Southern Division, incorrectly decided and gave judgment that the appellant was not retired for physical disability resulting from active service in the armed forces of the United States, when in fact appellant was so retired from the United States Navy.

Dated this 25th day of April, 1958.

/s/ PHILIP CRITTENDEN,  
Attorney for Appellant.

[Endorsed]: Filed May 1, 1958.